

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**Kelsey Battle d/b/a Battle Fashions**

**Opposer,**

**v.**

**Phoenix 7, LLC Ltd., Liab Co.**

**Applicant**

**Opposition No. \_\_\_\_\_**

**Serial No. 78/914,575**

**Published: 02/13/2007**

04/24/2007 SWILSDM1 00000145 78914575

01 FC:6402

300.00 OP

**NOTICE OF OPPOSITION**

Opposer, Kelsey Battle d/b/a Battle Fashions ("Opposer"), is a business located at 737 Godfrey Drive, Fayetteville, NC 28303, and believes that it will be damaged by and hereby opposes the registration of the mark "I CAN THEREFORE I AM!", shown in Application Serial No. 78/914,575 for t-shirts, sweatshirts, jackets, pants, shorts, vests, polo shirts, sports shirts, warm-up suits, belts, hats, caps and visors ("Applicant"). Applicant seeks registration of its alleged mark based upon an intent-to-use such mark in interstate commerce. Applicant's mark was published for opposition in the *Official Gazette* on February 13, 2007 and Opposer has obtained the necessary extension of time to file this Opposition.

1. Opposer has since at least as early as May 1999 been in the business of manufacturing, selling and distributing men's, women's and children's clothing, such as jeans, jackets, coats, sweatpants, slacks, suits, hats, headbands, socks, belts, undergarments, neckties, shorts, sandals, caps, visors, wristbands, boots, pants, dresses, shoes and sneakers throughout the United States.

2. In connection with its business, Opposer has adopted and used the mark ICAN in interstate commerce and has used the mark ICAN on a variety of articles of clothing for men, women and children.



04-20-2007

3. Opposer has developed substantial good will in the ICAN mark, and therefore the mark is an important and valuable asset of Opposer's business.
4. Opposer is the owner of United States trademark registration no. 3,081,141 on the Principal Registry in the United States Patent and Trademark Office for its ICAN mark as set forth in Exhibit A attached hereto. This trademark registration issued on April 18, 2006 and was filed on May 5, 2003, long prior to Applicant's filing date. This registration and prior actual use of the mark ICAN form the basis for this Opposition.
5. The above-referenced registration is valid and subsisting and constitutes prima facie evidence of Opposer's exclusive right to use the ICAN mark in commerce on the goods set forth in the registration. 15 U.S.C. §1115(b).
6. Opposer first used the ICAN mark in commerce at least as early as May 1999, long prior to the filing date of Applicant's intent-to-use application.
7. Subsequent to Opposer's use of the mark ICAN, and subsequent to the filing date of Opposer's ICAN trademark registration application, Applicant filed its application alleging an intent-to-use the mark I CAN THEREFORE I AM! in commerce on an array of clothing articles such as t-shirts, sweatshirts, jackets, etc. Opposer's Federal Registration No. 3,081,141 covers items of apparel in International Class 25. Thus, the subject application seeks to register a confusingly similar mark for the same goods, namely clothing.
8. Applicant's mark I CAN THEREFORE I AM! is confusingly similar to Opposer's ICAN mark. The marks are similar in sound, appearance and meaning. Furthermore, the marks create essentially the same commercial impression. Applicant's mark I CAN THEREFORE I AM! falsely implies a connection with Opposer's ICAN mark.

9. Opposer's and Applicant's goods will be sold in the same channels of trade and in direct competition.

10. Thus Applicant's mark so resembles Opposer's registered ICAN mark as to be likely to cause confusion, mistake or to deceive in violation of 15 U.S.C. §1114(1). Such confusion, mistake or deception will result in damage and injury to Opposer, its mark and the goodwill of its business associated therewith.

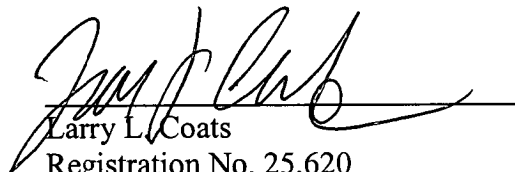
WHEREFORE, Opposer prays that application serial no. 78/914,575 be refused registration, and that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Two duplicate copies of this Notice of Opposition and the fee of \$300 are enclosed herewith. Any additional fees may be charged to counsel's deposit account, Coats & Bennett Deposit Account No. 18-1167.

Respectfully submitted this the 16th day of April 2007.

**Coats & Bennett, P.L.L.C.**  
**Attorney for Opposer**

By:



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**CERTIFICATE OF MAILING**

I HEREBY CERTIFY THAT THIS DOCUMENT TOGETHER WITH THE REQUIRED FEE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL, POSTAGE PREPAID, ON THE DATE INDICATED BELOW, IN AN ENVELOPE ADDRESSED TO: **TRADEMARK TRIAL AND APPEAL BOARD, U.S. PATENT & TRADEMARK OFFICE, POST OFFICE BOX 1451, ALEXANDRIA, VIRGINIA 22313-1451**

Date: April 16, 2007

Name: Kathy L. McDermott

Kathy L. McDermott



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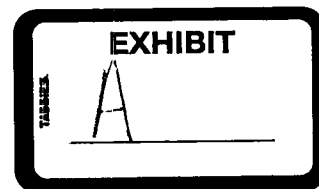
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## Typed Drawing

Word Mark	ICAN
Goods and Services	IC 025. US 022 039. G & S: men's, women's and children's clothing, namely, jeans, jackets, coats, sweatpants, slacks, suits, hats, headbands, socks, belts, undergarments, neckties, shorts, sandals, caps, visors, wristbands, boots, pants, dresses, shoes, sneakers and athletic footwear. FIRST USE: 19990506. FIRST USE IN COMMERCE: 19990506
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	76512385
Filing Date	May 5, 2003
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	January 24, 2006
Registration Number	3081141
Registration Date	April 18, 2006
Owner	(REGISTRANT) Battle, Kelsey DBA Battle Fashions INDIVIDUAL UNITED STATES 7237 Godfrey Drive Fayetteville NORTH CAROLINA 28303
Attorney of Record	Larry L. Coats
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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